UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:10cv361-W-02

(3:06cr102-W)

MARVIN FITZGERALD OUTING)	
)	
Petitioner,)	
)	
v.)	ORDER and NOTICE
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

THIS MATTER is before the Court upon Petitioner's Motion for Summary Judgment, filed January 13, 2011 (Doc. No. 7).

A review of the record reflects that Petitioner filed his Motion to Vacate on August 5, 2010 (Doc. No. 1), and amended it on October 4, 2010 (Doc. No. 4). On January 3, 2011, the Court entered an Order directing Respondent to respond to Petitioner's Motion to Vacate within forty days. Such responsive pleading is due on or before February 12, 2011. (Doc. No. 6).

Nevertheless, after the passage of a mere 10 days after the entry of the Court's Order,

Petitioner has filed the instant Motion for Summary Judgment. (Doc. No. 7). Suffice it to say,
in the absence of a concession or some other response from Respondent demonstrating that

Petitioner is entitled to a judgment as a matter of law, Petitioner's Motion for Summary

Judgment must be dismissed as premature.

IT IS, THEREFORE, ORDERED that Petitioner's Motion for Summary Judgment [Doc. No. 7] is **DISMISSED** as premature. Should he choose to do so, Petitioner may re-file a motion for summary judgment after Respondent files a responsive pleading in this matter.

The Clerk is directed to send copies of this Order and Notice to the parties.

SO ORDERED.

Signed: January 23, 2011

Frank D. Whitney

United States District Judge